

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

| | | |
|----------------------------|---|--------------------|
| STEVEN PAYNE, | * | |
| Plaintiff | * | |
| | * | |
| V. | * | Case No. 4:05CV184 |
| | * | |
| WOODPECKER CABINETS, INC., | * | |
| Defendant | * | |

PLAINTIFF'S ORIGINAL COMPLAINT

A. PARTIES

1. Plaintiff, STEVEN PAYNE, is an Individual who resides in Collin County, Texas.

2. Defendant, WOODPECKER CABINETS, INC., a corporation based in Texas, is organized under the laws of the State of Texas. Defendant has answered herein and further service upon Defendant is not necessary at this time.

B. JURISDICTION

3. This Court has jurisdiction over the lawsuit because the action arises under 28 USC Section 1331.

C. CONDITIONS PRECEDENT

4. All conditions precedent have been performed or have occurred.

D. FACTS

5. Plaintiff would show that he was an employee of Defendant, WOODPECKER CABINETS, INC. On July 1, 2004, while performing his usual and customary duties, Plaintiff was injured while using a table saw which was owned and controlled by

Defendant. The blade of the saw injured Plaintiff's left hand. Plaintiff would further show that during the period of his employment with Defendant he was not paid overtime paid as required under federal law.

E. COUNT 1

6. Personal injury. Plaintiff's injuries were proximately caused by Defendant's negligence, as well as careless and reckless disregard of its duty to provide a safe work place.

The negligent, carelessness and reckless disregard of duty of Defendant consisted of, but is not limited to, the following acts and omissions: Defendant failed to provide Plaintiff with safe equipment in that the saw was not properly equipped with a safety guard as set forth by industry standards.

F. COUNT 2

7. Violations of the Fair Labor Standards Act. Plaintiff further alleges violations of the Fair Labor Standards Act. While employed by Defendant, Plaintiff was frequently required to work more than forty hours per week. However, Plaintiff was never paid overtime pay as required by law. Plaintiff seeks reimbursement for overtime not paid, as well as for his attorneys fees in having to prosecute this suit.

Plaintiff further seeks the payment of wages lost in an additional equal amount as liquidated damages.

G. DAMAGES

8. As a direct and proximate result of Defendant's conduct Plaintiff suffered the following injuries and damages with respect to the personal injury that he suffered in Defendant's employ:

- A. Medical care and expenses in the past;
- B. Physical pain and mental anguish in the past and future;
- C. Loss of earning capacity;

As a direct and proximate result of Defendant's conduct, Plaintiff suffered the following damages due to Defendant's failure to pay Plaintiff overtime wages:

- A. Loss of pay.
- B. Costs of court.
- C. Attorneys fees.

I. PRAYER

9. For these reasons, Plaintiff asks for judgment against Defendant for the following:

- a. Actual damages in an amount to be determined by the Court;
- b. Pre-judgment and post-judgment interest;
- c. Reasonable attorney fees;
- d. For additional damages as provided by the Fair Labor Standards Act.
- e. Costs of court;
- f. All other relief the Court deems appropriate.

Respectfully submitted,

/s/ Michael Sloan

MICHAEL SLOAN
Law Offices of Michael Sloan
P.O. Box 600
McKinney, Texas 75070
(972) 548-0009; 562-2424
Fascimile (972) 548-0633
State Bar No. 18506900

CERTIFICATE OF SERVICE

I hereby certify that on the 24th day of August, 2005,
a true and correct copy of the foregoing was delivered to
Kelly William Milligan, CLOUSE, DUNN, HIRSCH, 5200
Renaissance Tower, 1201 Elm Street, Dallas, Texas 75201.

/s/ Michael Sloan

Michael Sloan

